

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

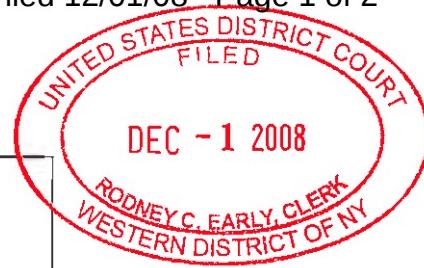
WILLIAM D. LAWTON and  
GERALD A. MILLER, JR.,

Plaintiffs,

- vs -

DAVID ISABELLA and  
MORGAN STANLEY & CO. INCORPORATED,

Defendants.



**ORDER**

Civ. Action No.  
08-CV-06197

Upon the Notice of Removal, dated April 30, 2008, filed by defendants David Isabella and Morgan Stanley & Co. Incorporated (collectively, "Defendants"), and the exhibits thereto, which removed the civil action titled *Lawton v. Isabella*, Index No. 08-681 from the Supreme Court of the State of New York, County of Monroe, to the United States District Court for the Western District of New York pursuant to 15 U.S.C. §§ 77p(c), 78bb(f)(2), and 28 U.S.C. § 1441; and

Upon Defendants' Notice of Motion, dated April 30, 2008, for an Order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), dismissing Plaintiffs' complaint against them, the Affidavit of Jamie C. Kocher, sworn to April 29, 2008, and the exhibits thereto; and

Upon the Plaintiffs' Notice of Motion to Remand, dated May 30, 2008, and the Affidavits of (i) William D. Lawton, sworn to May 30, 2008; (ii) Gerald A. Miller, sworn to May 29, 2008; (iii) Robert J. Pearl, sworn to May 30, 2008, and all exhibits thereto; and

Upon the Affirmation of Richard A. McGuirk, dated July 18, 2008, and the exhibits submitted therewith; and

Upon all prior pleadings and proceedings herein; and

- 2 -

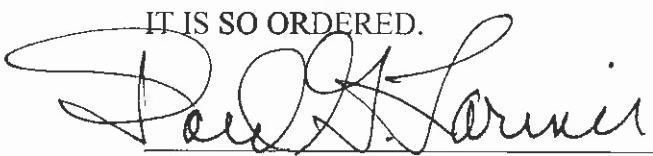
The matter having come before the Court on September 23, 2008, and Richard A. McGuirk of Nixon Peabody LLP, having appeared on behalf of Defendants and Robert J. Pearl of Pearl Malarney Smith, P.C., having appeared on behalf of Plaintiffs; and

The Court having had due deliberations thereon and having advised counsel on September 23, 2008 of its decision to (1) deny Plaintiffs' motion to remand, (2) grant Defendants' motion to dismiss, with prejudice, and (3) allow Plaintiffs an opportunity to move for leave to file a further amended complaint, alleging claims under the federal securities law by October 24, 2008; and

Plaintiffs having notified the Court by letter dated October 13, 2008, that they did not intend to move for leave to file a further amended complaint; it is hereby

ORDERED, ADJUDGED AND DECREED that Defendants' motion to dismiss is in all respects GRANTED; Plaintiffs' motion to remand is in all respects DENIED; and Plaintiffs' Class Action First Amended Complaint is DISMISSED in its entirety, with prejudice.

IT IS SO ORDERED.



Hon. David G. Larimer  
United States District Judge

Dated: November 28, 2008

ENTER.